

21st CENTURY RADIO VENTURES, INC.
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September 25, 1995

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Rm 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

re: RM-8634
MM Docket No. 95-83

Dear Mr. Caton:

Transmitted herewith is the Motion to Dismiss Comments of Lee W. Shubert, Trustte with respect to the Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Littlefield, Wolfforth and Tahoka, Texas), Notice of Proposed Rule Making, MM Docket No. 95-83, RM-8634, DA 95-1271 (June 19, 1995).

If you have any questions regarding this matter, please contact the undersigned.

Respectfully submitted,

James L. Primm

Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations)
(Littlefield, Wolfforth and Tahoka, Texas)

MM Docket No. 95-83
RM-8634

DOCKET FILE COPY ORIGINAL

TO: Chief, Allocations Branch

Motion to Dismiss Comments of Lee W. Shubert, Trustee

21st Century Radio Ventures, Inc., ("Petitioner"), hereby requests that the Commission dismiss the "Reply Comments" of Lee W. Shubert, Trustee, licensee of KLLL (FM), Lubbock, Texas ("KLLL") filed in the above captioned proceeding.

"Reply Comments" Untimely Filed

In its Notice of Proposed Rule Making in the above referenced proceeding, the Commission set forth the period during which comments could be filed. Comments on the Petition for Rule Making were due by August 10 and reply comments were due August 25.

The Commission's rules make clear that after comments are filed, interested parties will have the opportunity to file "comments in reply to the original comments" (Section 1.415(c)(emphasis added)). In other words, reply comments must be limited to issues raised in the comments. The rules permit petitioners to promulgate rule changes, receive comments thereon and then respond to such comments.

Petitioner filed comments in this proceeding in a timely manner. Such comments addressed two specific matters (1) rectifying Petitioner's oversight to provide a verified copy of its Petition and (2) reaffirming the interest of Petitioner in the construction permit for Wolfforth, Texas.

KLLL did not address either of the two issues in its "reply comments" which were the only appropriate topics upon which it might comment under the Commission's rules. Instead it addressed issues raised by Petitioner in its Petition. As a result, KLLL's

"Reply Comments" should be construed as comments to Petitioner's Petition. Such comments were due August 10, 1995 and were therefore filed late.

Because the Commission's rules do not generally permit additional comments after the reply period, it appears that KLLL may be trying to shut out Petitioner from responding to the allegations made by KLLL in its "Reply Comments". Such an abuse of Commission process¹ should not be condoned and KLLL should be thwarted in this attempt by having its comments dismissed without consideration.

Permission to File Re-reply Comments

In the event that the Commission accepts KLLL's comments as timely filed, or permits such comments to stand as informal comments under the Commission's rules, Petitioner hereby requests that it be granted a reasonable amount of time to file comments to Petitioner's "Reply Comments". Such an opportunity is justified in the instant case because Petitioner should have been afforded the opportunity to respond to KLLL's comments if KLLL had filed during the appropriate comment period.

Conclusion

The Commission should expeditiously move to dismiss KLLL's "Reply Comments" and should grant the requests made by Petitioner in its Petition for Rule Making.

All statements contained herein are true and correct to the best of my knowledge

¹ The Commission has defined abuse of process as "the use of a Commission process, procedure, or rule to achieve a result which that process, procedure or rule was not designed or intended to achieve or, alternatively, use of such process, procedure, or rule in a manner which subverts the underlying intended purpose of that process, procedure or rule." First Report and Order in BC Docket No. 81-742, Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, Competing Applicants and Other Participants to the Comparative Renewal Process and to the Prevention of Abuses of the Renewal Process, (released May 16, 1989).

and belief.

Respectfully submitted,

21st Century Radio Ventures, Inc.

By: 

James L. Primm
President and Counsel

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Santa Monica, CA 90401
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Certificate of Service

I, Faith Branch, hereby certify that on this 26th day of September, 1995, I caused to be delivered by first class mail, postage pre-paid, copies of the foregoing Motion to Dismiss Comments of Lee W. Shubert Trustee, to the following:

**William R. Richardson, Jr.
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037
(Attorneys for Lee W. Shuber, Trustee)**

Faith Branch
Faith Branch